

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 10, 2002**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on May 10, 2002. The meeting was tape recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commission Members Mike Joyner and Ricky Wright.

MINUTES OF April 12, 2002 MEETING

The Chairman asked both Commission Members if they had any corrections or additions regarding the Commission Agenda for the April 12, 2002, meeting. Neither Commission Member had any corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioners Joyner and Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. The Chairman stated she found no conflicts of interest with regard to herself. Commissioners Joyner and Wright stated they had reviewed the agenda and found no conflict of interest. So Ordered.

HEARING CASES - 85 listed.

I. OFFERS IN COMPROMISE

Chief Deputy Counsel Fred Gregory stated that the following cases were to be carried over:

#2 – Saraha Mini Mart
#15 – Outcast
#72 – Rendevous
#73 – Charlie Brown 9
#80 – King Richards
#81 – Pit Surf Company
#82 & 82A. – Fosters

Chief Deputy Counsel Fred Gregory stated that Attorney Dennis Guthrie was present to speak on behalf of his client, case #1, Tremont Music Hall. Mr. Guthrie apologized to the Commission for getting the information to them late. He stated that his office had lost power the previous day and some of the information was missing from the books that he had given the Commission. Mr. Guthrie went through the brief with the Commission. Mr. Guthrie went on to further state that statute G.S. 90-95(G)(1), doesn't apply in this case because the chain of custody was not met. He stated that "you don't know what happened to the envelope and who handled the envelope." Assistant Counsel LoRita Pinnix stated that she felt that statute 90-95(G)(1) does apply to this case. She stated that even though there was no written chain of custody for each person who touched it in the lab, there was testimony from an agent who bought the drugs, put them in an envelope, sent them to the lab and requested an analysis. From there, she stated, the chain of custody did breakdown. Ms. Pinnix provided a case log that statute 90-95(G)(1) is not the only proper method of custody when not all persons in the chain can't testify at a hearing. The Chairman stated that her focus was on the charge of failure to supervise, she stated that even if the lab analysis and evidence had been admitted and everything was perfectly complied with, she didn't think there was sufficient evidence to show failure to supervise. The Chairman further stated that she did agree that the statute applies in administrative hearings. The Chairman made a motion to modify the recommended decision by adding an additional Conclusion of Law saying that there is insufficient evidence that the permittee failed to superintend in person or through a manager of the business, Tremont Music Hall, on August 27, 2000, at 2:00 a.m., in violation of G.S. 18B-1005(b). The Chairman made a motion to deny Mr. Guthrie's argument that G.S. 18B-1005(b) was unconstitutional and also denied request for fees and costs from Mr. Guthrie. Commissioner Wright seconded the motion. So Ordered.

The Chairman noted a reminder regarding the amount of time that is allowed for contested cases to be heard. A crackdown by the General Assembly on delay in administrative agency proceedings sets the maximum number of days an agency has to issue a final decision at 120 days, which will require a case to be considered no later than the third Commission hearing after we receive the record. That will be the absolute final day a contested case can be heard.

Chief Deputy Counsel Fred Gregory stated that Attorney Joseph L. Ledford was present to speak with regard to cases #47, #48, #49, #50, #51, #54 and #75. Mr. Ledford stated that in the past he had petitioned the Commission to consider not eliminating the three-day waiting requirement for membership into a private club, but that the Commission consider a limited membership that would allow a three-day limited membership once a year. Mr. Ledford went on to further state that he ultimately withdrew the petition, because he realized that what he was asking the Commission to agree to was to engage in rulemaking, which has its own procedures. The Chairman asked Mr. Ledford if he would submit in writing what he was asking of the Commission, since the agenda was full, and that it would be

taken up at the June Commission meeting. Mr. Ledford said that he would like to be heard, instead of submitting a request. He went on further to state that he had driven a long way and that he was there on the advice of the legal staff and was told that this was probably the best way to be heard. Commissioner Joyner asked Mr. Ledford if he could summarize what he was asking of the Commission in a couple of sentences. Mr. Ledford stated that he could not. The Chairman stated that she was only made aware of Mr. Ledford's request to address the Commission the day before, around 5:00 p.m., and was not sure if Commission members Wright and Joyner were aware of this. She went on to state that the Agenda was full and that she was not inclined to make any policy changes today and asked again that Mr. Ledford put request in writing and submit to the Commission to be heard at the June Commission meeting. Mr. Ledford stated that he would submit a written request to the Commission. He also asked that his cases be carried over to the June meeting. The Chairman stated that she was not inclined to continue these cases, or make policy changes at this meeting. Commissioner Joyner stated that he didn't mind if the cases were continued. Commissioner Wright disagreed and felt like they shouldn't be continued. Mr. Ledford then asked that the fines in these cases be reduced to \$200.00. The Chairman denied the request and made a motion that his cases be ratified. Seconded by Commissioner Wright. So Ordered.

Commissioner Wright had a question about the following case:

#62 – Hanes Mall B P – Commissioner Wright asked Assistant Counsel LoRita Pinnix whether the permittee was accepting the offer. Ms. Pinnix pulled the file and confirmed that the permittee had accepted the offer.

REMAINING OFFERS IN COMPROMISE

Neither the Chairman nor Commissioner Joyner had any questions or comments concerning any other cases as submitted. The Chairman made a motion that all the remaining cases be approved and ratified with the exception of #47, #48, #49, #50, #51, #54 and #75 which were already ratified. The motion was seconded by Commissioner Joyner. So Ordered.

- II. ABC Store Location – Currituck County. Administrator Michael Herring presented information regarding an ABC store relocation at 1123 Ocean Trail. Agent Gilmer P. Forbis, ALE District I, conducted an investigation and found that Currituck County ABC Board is requesting to relocate their present store #3 from its present location to a new site in the Ocean Club Centre section of Corolla at 500 Hunt Club Drive. The proposed location sits at the intersection of Ocean Trail, also known as Highway 12 and Hunt Club Drive in Corolla. Stanford and Susan White own the proposed property and the Currituck County ABC Board is planning to purchase this building and property for \$1.2 million. The nearest church is 7.1 miles and the nearest school is 14.4 miles from the proposed site. The sign regarding notice of intent to open an ABC store has been posted for 30

days in accordance with ABC Commission regulations. There is no conflict of interest. To date, no complaints had been received regarding the proposed ABC Store location. Mr. Herring made a recommendation to approve the location. The Chairman made a motion that the store relocation be approved, seconded by Commissioner Joyner. So Ordered.

- III. ABC Store Location – High Point ABC Board – Guilford County. Administrator Michael Herring presented information regarding an ABC store relocation at 271 East Chester Drive. Agent Chris Poole, ALE District VI, conducted an investigation and found that the High Point ABC Board wishes to close the old ABC Store #3 at 271 East Chester Drive and build a new building at 244 East Parris Avenue. The Proposed location is approximately .03-acre tract in the city limits of High Point, NC. High Point Mall Limited Partnership owns the proposed property and the High Point ABC Board plans to purchase the proposed property by trading the property listed as lot B, at 271 East Chester Drive for the new location and \$70,000.00. The nearest church is .5 miles and the nearest school is 1.8 miles from the proposed site. The sign regarding notice of intent to open an ABC store has been posted for 30 days in accordance with ABC Commission regulations. There is no conflict of interest. To date, no complaints had been received regarding the proposed ABC Store location. Mr. Herring made a recommendation to approve the location. The Chairman made a motion that the store relocation be approved, seconded by Commissioner Joyner. So Ordered.

IV. DISCUS – Product Education Request

The Distilled Spirits Council of the United States (DISCUS) the national trade association representing producers and marketers of distilled spirits sold in the United States, requested that the Commission consider modifying its interpretation of ABC Rule NCAC 2T .0901, regarding the relationship between North Carolina Distiller and Mixed Beverage Permittee for the purpose of product education. Mr. Mark S. Gorman, Senior Vice President of Government Relations, for DISCUS was present and spoke regarding the issue. He stated the he had reviewed the new Guidelines prepared by the Commission and noticed that novelty and specialty items can have a wholesale value up to \$5.00 at trade shows, conventions, etc. He asked the Commission to consider raising it to \$10.00 or \$25.00. He further stated that other states are raising their prices up to \$10.00 and find no problems. The Chairman asked Mr. Gorman to submit to the Commission, in writing, what they are asking to be changed. Administrator Michael Herring presented the “Guidelines for the Solicitation of Mixed Beverages Permittee’s by Distiller Representatives in North Carolina,” and discussed them with the Commission. Mr. Herring proposed that the Guidelines become effective September 1, 2002, in order for the brokers to get their staff in place. Pursuant to a motion by the Chairman, the Commission adopted a resolution authorizing the limited educational and promotional activities requested and described in the “Guidelines” document, to become effective September 1, 2002. Seconded by Commissioner Wright. So Ordered.

OTHER BUSINESS

No other business, new or old, was heard. The Chairman made a motion to adjourn this meeting. Seconded by Commissioner Joyner. So ordered.

WITH no further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division